

NEW ARIZONA JUVENILE RULES

Task Force 2019 - 2021 **III.**

DEPENDENCY, GUARDIANSHIP, TPR

Evidence Standards Under Part III: Rule 104

Virtual Proceedings: Rule 110

General Provisions, Parties, and Participants, Rules: 301 – 311

General Provisions for Proceedings and Procedures, Rules: 312 – 343

Guardianship Proceeding, Rules: 344 – 348

Proceedings for Termination of Parental Rights, Rules: 349 - 351

NEW PART I EVIDENCE RULE APPLICABLE TO PART III CASES

- ▶ Rule 104. Applicability of the Arizona Rules of Evidence; Admissibility of Evidence and Reports
- Derived from Current Rules 32(E)(3), Rule 45(A),(B), (C), (D), and (E), 47.3(C), 51(C), 55(D), 56(D), 58(E), 59(D), 60(D), 63(D) and (E), 66(D) and (E), and 77(G).

Rule 104 consolidates 17 evidentiary standards from the current Juvenile Rules into one rule, all but the standards set forth in restyled Rule 105(e)(4) (electronically filed or scanned documents considered originals under ARE 1002) and restyled Rule 336(c)(2), derived from Current Rule 53(c), (settlement conference statements not admissible except as provided by ARE 408).

- The new rule provides that the Arizona Rules of Evidence apply in contested adjudication hearings in delinquency, dependency, Title 8 guardianship, and termination proceedings, except as otherwise provided by law or agreement.
- In all other proceedings, "non-privileged evidence tending to make a fact at issue more or less probable is admissible" unless the evidence lacks reliability, will cause unfair prejudice or confusion, or waste time. [Uniform Standard adopted by the Advisory Committee on the Rules of Evidence]

Rule 104(c) (derived from Current Rule 45(E) and A.R.S. § 8-237, in which guardianship has been added by SB 1069) provides for admissibility of statements of a child regarding abuse or neglect if reliable.

- ▶ Rule 104(d) governs the admissibility of reports.
- Dual Note Nule 104(d)(2), in any dependency, Title 8 guardianship, or termination hearing, the court "must" review a child safety worker's (i.e., a caseworker's) report and "may" admit the report into evidence if the workers who prepared or approved the report are available for cross-examination and the report was timely disclosed.

- ▶ Rule 104(d)(7) provides that the court may admit any other report that is court ordered or required by law, if the report has been timely disclosed and the author of the report is available for cross-examination.
- ▶ Rule 104(d)(8) provides that if the court relies in whole or in part on a report under this section, the report must be admitted into evidence to ensure the report is part of the appellate record.

- ► "Available for Cross-Examination" defined in Rule 104(d)(10).
- A person is available for cross-examination if (1) the person appears in court, (2) the person is available to testify virtually under Rule 110, or (3) the person is subject to the court's subpoena power, unless the person is unable or unwilling to comply with the subpoena.

▶ Rule 104(d)(11) (added by the Court) provides that the admission of a report in one proceeding does not create a presumption that it is admissible in other proceedings.

Importantly, the comment clarifies that there was no intent to change any ruling on evidence admissibility.

RULE 110. VIRTUAL PROCEEDINGS; DECLARED EMERGENCIES

- ▶ Under the provisions of the rule, evidentiary hearings would presumptively be conducted in person in the absence of an emergency; but during a declared emergency, evidentiary hearings would presumptively be conducted virtually. The rule provides exceptions for overcoming the presumption in either situation.
- ▶ The court must make case-specific findings to overrule an objection to a virtual evidentiary hearing.

The rule also includes requirements for a party or witness to testify virtually as well as requirements for the introduction of documents during virtual testimony. **RULE 301**

APPLICATION AND INTERPRETATION

"Rights of Parties: The court should interpret the rules in Part III in a manner that protects the rights of the parties and the child's best interests and gives paramount consideration to the child's health and safety."

RULE 302
DEFINITIONS

"Parent" as used in Part III, includes those defined as such in Rule 102 and, except in termination proceedings, also includes a guardian appointed by the court under Title 8 or Title 14 and an Indian custodian.

"Participant"...

RULE 303: ASSIGNMENT AND APPOINTMENT OF AN ATTORNEY; ADVISORY ATTORNEY

(a) (3) Limitation. The assigned attorney is not attorney of record for purposes of accepting service of process for a parent who has never appeared in the proceeding unless the parent, after communication with the assigned attorney, authorizes the attorney in writing counsel to accept service or the attorney avows on the record that the parent expressly authorized the attorney to accept service.

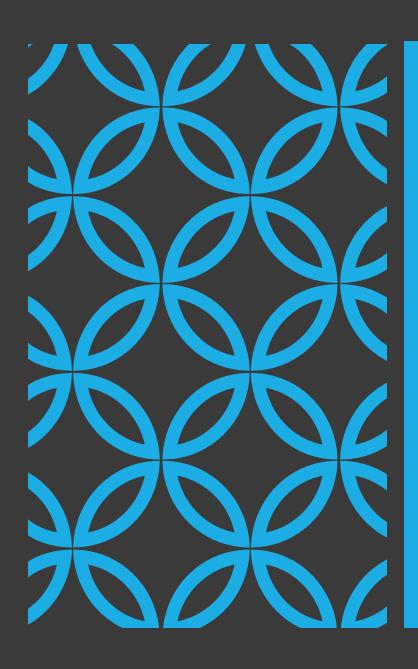
RULE 303: ASSIGNMENT AND APPOINTMENT OF AN ATTORNEY; ADVISORY ATTORNEY

(b) Appointment of an Attorney for a Parent or Guardian.

(c) Appointment of an Attorney for a Child. Children in dependency and termination cases are presumed indigent and are entitled to a court-appointed attorney.

RULE 304 APPEARANCE, SUBSTITUTION, WITHDRAWAL; RESPONSIBILITIES TO THE COURT

Merger of Civil Rule 5.1 and Current Juvenile Rule 39 adapted to specific needs of juvenile court, including oral motions for missing clients and adding requirement to provided email address for client



RULE 305 APPOINTMENT OF A GUARDIAN AD LITEM FOR ADULT OR CHILD

In addition to the appointment of an attorney, the court may appoint a guardian ad litem for a child or an individual who may be incompetent or in need of protection. A guardian ad litem under this rule must be an attorney.

RULE 306
DUTIES OF
CHILD'S
ATTORNEY, GAL

Duties unchanged but set out clearly in subparts

Diminished Capacity

Substituted Judgment

RULES 307 AND 308 -DUTIES OF PARENT'S COUNSEL AND GAL

Rule 309

Educational Requirements for Atty/GAL

Rule 310

Child's Rights

RULE 311: PARTICIPANTS RIGHTS

Added requirement for DCS to provide notice of all hearings to:

Current Placement

Adoptive or prospective relative placement

Tribes Nations

RULE 312: PUBLIC ATTENDANCE

Closed Hearing

Admonition is verbatim

Judge's Ability to limit attendance

RULE 314: NEW RULE CHANGE OF VENUE

Factors to Consider

Procedure for Sending County

Procedure for Receiving County

RULE 315: DISCLOSURE AND DISCOVERY

- PPH report "no later than 24 hours" new timeline
- Separate requirements for disclosure: adjudications vs. other contested hearings
- Failure to disclose timely before dependency does not constitute good cause/extraordinary circumstances
- Sanctions: should not exclude competent and potentially significant evidence that bears on the child's best interests.

NEW MOTION RULES 317 & 318 (FORMER RULE 46)

317 – Altering/Amending

318 – Motion to Set Aside

Beth Beckman's expertise

NEW RULE: RULE 317. ALTERING OR AMENDING A FINAL ORDER

- \triangleright Derived from Family Law Rules 83 and 85(a).
- Successor to motion for new trial.
- Limited grounds: (1) insufficient findings of fact or legal conclusions as required by law, and (2) clerical mistake or a mistake arising from oversight or omission.
- Must be filed not later than 12 days after date of final order, as defined in Rule 601(b), unless extended by the court for extraordinary circumstances.

NEW RULE: RULE 319 MOTION FOR JUDGMENT AS A MATTER OF LAW

(a) Generally. A party other than the petitioner may make a motion for judgment as a matter of law as to some or all of the grounds or allegations in a petition or motion at the conclusion of the petitioner's presentation of evidence. When used in this rule, 'petitioner' is the party who initiated a dependency, permanent guardianship, or termination action, either by petition or motion.

NEW RULES

320 - Placement Preferences

322 – Transfer to a Tribal Court

323 – Simultaneous Dependency and Parenting/LDM Proceedings

326 – Required Admonition and Findings

329 – Service of Dependency Petition

335 – QRTP; Judicial Findings

NEW RULE: RULE 324. PROVIDING NOTICE OF A CHANGE IN A CHILD'S PLACEMENT

- (a) **Notice to Child's Attorney and GAL.** DCS must notify the child's attorney and an appointed GAL of any change in the child's placement. The notice must include the child's new placement address, the type of placement, and contact information, which must be kept confidential.
- (b) Notice to Parent's Attorney. DCS must notify the parent's attorney of any change in the child's placement and the type of placement. The notice must not include the child's new placement address or contact information. If the parent's attorney receives the new placement address or contact information, the attorney must keep the information confidential, not disseminate the information to the parent or any other person, and promptly notify counsel for DCS of the erroneous receipt.
- the child is relocated. If DCS is not able to provide advance notice of the child's relocation because relocation was necessary to protect the child, it must do so as soon thereafter as possible and no later than 24 hours after the change of placement, excluding weekends and holidays. DCS may provide the notice orally or electronically, including by email.

RULE: 325 MANDATORY JUDICIAL DETERMINATIONS

- Significant modification to current Rule 47.1
- Same approach with delinquency rule 217
- Easier to read and understand

RULE: 331 PRELIMINARY PROTECTIVE CONFERENCE

FORMER NAME: PREHEARING CONFERENCE

NEW NAME: PRELIMINARY PROTECTIVE CONFERNCE

RULE: 332 PRELIMINARY PROTECTIVE HEARING

COMPLETE REDO FOR ORGANIZATION

AND

CLARITY

RULE 333 CONTESTED REVIEW OF TEMPORARY CUSTODY

A parent may request a review of temporary physical custody of a child in an out-of-home placement at the preliminary protective hearing, or at the initial dependency hearing if the parent was not served and did not appear at the preliminary protective hearing. At the review, the court must determine whether removal of the child from the home was clearly necessary to prevent abuse or neglect, and whether the child should remain in an out-of-home placement.

RULES WORTHY OF MENTION

- 335 QRTP; Judicial Findings
- 336 Settlement Conf. may no longer adj a child dependent for parent's FTA
- 342 Motion for Return of Child explicitly states burden is on the moving parent
- 344 Guardianship any party may now file motion when a dependent child

TWO ADDITIONAL NEW GUARDIANSHIP RULES

Proposed Rule 349, Petition to Revoke Guardianship:

Generally. The child's guardian or any party to the dependency may petition for the revocation of an order granting permanent guardianship pursuant to A.R.S. § 8-873.

Proposed Rule 350, Services for Parent when Dependency Petition filed upon a Guardian:

Generally. When a dependency petition is filed while the child is in the custody of a permanent guardian, the court under A.R.S. § 8-873.01 must order reunification services for the parent whose child was previously adjudicated dependent if the parent meets the requirement of section (b).

ICWA

USC & CFR References included:

FORMS

Form 1 Notice to Parent Dependency Action

Form 2 Notice to Parent In-Home Dependency Action

Form 3 Notice to Parent Guardianship Action

Form 4 Notice to Parent Termination Action

Form 5a Notice of Appeal: Delinquencies

Form 5b Notice of Appeal: III, IV, V Proceedings

Form 6 Supplemental Designation of the Record

Form 7 Verified Confidential Parent Information Form

Form 8 Notice of Completed Adoption